drawer that controls the fictitious character of the payee; not the intent of the drawee, as erroneously stated in this case. *Trust Company of America* v. *Hamilton Bank*, 127 App. Div. (N. Y.) 515. It follows that payment having been made to the party entitled, the drawee cannot recover. *Bartlett* v. *Chicago First National Bank*, 156 Ill. App. 415, 247 Ill. 490, 93 N. E. 337.

CARRIERS — FEDERAL REGULATION — RIGHT OF COUNTERCLAIM IN ACTION FOR CHARGES. — In an action by an interstate carrier to recover freight charges, the shipper counterclaimed for damages occasioned to the freight during transportation. The plaintiff demurred to the counterclaim on the ground that it was contrary to Section 6 of the Interstate Commerce Act, which provides that no carrier shall "charge or demand or collect or receive a greater or less or different compensation . . . than the rates, fares, and charges which are specified" in the published schedule. (34 Stat. at L. 584.) *Held*, demurrer overruled. *Pennsylvania R. Co.* v. *Bellinger*, 166 N. Y. Supp. 652.

The Supreme Court has interpreted the section referred to to mean that the carrier cannot accept anything but currency in payment for freight. *Louisville, etc. R. Co.* v. *Mottley*, 219 U. S. 467; *Chicago, etc. Ry. Co.* v. *U. S.*, 219 U. S. 486. It has been held, therefore, that to allow a counterclaim would be contrary to the intention of the Act and would open the door to a renewal of the old methods of rebate and discrimination. *Illinois Central R. Co.* v. *Hoopes & Sons*, 233 Fed. 135; *Chicago, etc. Ry. Co.* v. *Stein*, 233 Fed. 716; *Johnson-Brown Co.* v. *Delaware, etc. R. Co.*, 239 Fed. 590. These decisions were based on a ruling of the Interstate Commerce Commission, since withdrawn, and on a number of cases involving private agreements. I. C. C. CONFERENCE RULINGS, No. 48, March 10, 1908; No. 323, June 8, 1911; *Louisville, etc. R. Co.* v. *Mottley, supra; Chicago, etc. Ry. Co.* v. *U. S., supra; N. Y. Central, etc. R. Co.* v. *Gray*, 239 U. S. 583. While a compromise out of court is obviously illegal, there is no reason why the court, having all of the parties before it, should not combine their several disputes in one proceeding; for if the parties really intend to evade the Statute they can do so as easily through the medium of two lawsuits as they could by one. The better opinion, therefore, would seem to be that the counterclaim should be allowed. *Wells Fargo & Co.* v. *Cuneo*, 241 Fed. 727; *Battle* v. *Atkinson*, 9 Ga. App. 488, 71 S. E. 775.

CARRIERS — LIENS — FREIGHT PAYABLE IN ADVANCE — EFFECT OF ABANDONMENT OF VOYAGE ON LIENS. — The *Appam*, a British merchant vessel, was captured by a German man-of-war and brought to Hampton Roads. Restitution of ship and cargo was decreed because of a breach of American neutrality. The shipowners bring a libel to enforce a lien on the cargo for freight. By the bill of lading freight was to be considered earned upon shipment, ship or goods lost or not lost, and there was to be a lien for all charges whether payable in advance or not. *Held*, that there is no lien. *The Appam*, 243 Fed. 230 (U. S. Dist. Ct., S. D., N. Y.).

Freight payable in advance is not protected at the common law by a lien as a legal incident thereto. *How* v. *Kirchner*, 11 Moo. P. C. 21; *Kirchner* v. *Venus*, 12 Moo. P. C. 361. But see CARVER, CARRIAGE OF GOODS BY SEA, 4 ed., § 663. Hence the only lien arising in this case is a lien by express agreement of the parties. *Kirchner* v. *Venus*, *supra*. The contract of affreightment is abrogated when the contemplated voyage is abandoned, whatsoever the cause of abandonment. *Sampayo* v. *Salter*, 1 Mas. (U. S. Circ. Ct.) 43; *Metcalfe* v. *Britannia Ironworks Co.*, 2 Q. B. D. 423. This operates to destroy the lien, and in the usual case would also prevent the accrual of liability. *St. Enoch Shipping Co.* v. *Phosphate Mining Co.*, [1916] 2 K. B. 624; *Richardson* v. *Young*, 38 Pa. St. 169. But where payment is to be made as in the principal case, a debt

arises upon shipment which survives whatever the outcome of the voyage. *National, etc. Co.* v. *International Paper Co.*, 241 Fed. 861. Revival of the lien, however, depends on the existence of a new contract, express or implied from the circumstances, to substitute the carriage effected for that originally agreed upon. *Caze & Richaud* v. *Baltimore Ins. Co.*, 7 Cranch (U. S.) 358; *St. Enoch Shipping Co.* v. *Phosphate Mining Co.*, *supra*. As no such agreement can be implied in the principal case, the result seems sound.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — TEMPORARY ABSENCE AS AFFECTING STATUS OF PASSENGERS — DUTY OF CARE. — Plaintiff, a passenger on defendant's train, alighted at a way station to obtain breakfast. Upon attempting to reënter her car, she fell and was injured. The car had not been brought opposite the station platform. *Held*, that a passenger while off the train is owed only reasonable care, although entitled to the highest degree of care while riding, and that plaintiff may recover. *Sellars* v. *Southern Pacific R. Co.*, 166 Pac. 599 (Cal.).

Persons who alight from the conveyance of a carrier for a temporary and reasonable purpose are frequently said to retain their status as passengers. *Alabama, etc. R. Co.* v. *Coggins*, 88 Fed. 455; *Tompkins* v. *Boston El. R. Co.*, 201 Mass. 114, 87 N. E. 488. See 2 HUTCHINSON, CARRIERS, § 1012. The distinction is often drawn, as in the principal case, between the degree of care owed by a carrier to its passengers in course of transportation, and that owed to passengers while off the conveyance. *Kelly* v. *Manhattan R. Co.*, 112 N. Y. 443, 20 N. E. 383; *Moreland* v. *Boston, etc. R. Co.*, 141 Mass. 31, 6 N. E. 225. Occasionally a carrier has been held to the highest degree of care in all its relations with passengers. *Brackett* v. *Southern R. Co.*, 88 S. C. 447, 70 S. E. 1026. See *Atchison, etc. R. Co.* v. *Shean*, 18 Colo. 368, 371, 33 Pac. 108, 109. Opposing these are authoritative statements pronouncing degrees of care unscientific and impractical. *Raymond* v. *Portland R. Co.*, 100 Me. 529, 62 Atl. 602; *Milwaukee, etc. R. Co.* v. *Arms*, 91 U. S. 489. See 6 ALB. L. J. 313, 314; 18 HARV. L. REV. 536. The care exacted in any situation should be expressed as that care which a reasonable person would use under those circumstances. The amount of effort required to attain this standard will of course vary with the circumstances, but the result is always reasonable care. The distinction, which the court in the principal case attempts to draw, therefore, seems unsound. It would further seem that the category of passengers that the courts attempt to create in these cases is an unnecessary one, and that the result should be reached on pure tort principles. Where the injury is the result of a condition of the premises, and in some jurisdictions where it is the result of negligent management of an active force, this would involve the question of whether the plaintiff is an invitee or a mere licensee.

CONFLICTS OF LAWS — REMEDIES — RIGHTS OF ACTION — RIGHT OF A CONSIGNEE TO RECOVER FOR MENTAL ANGUISH CAUSED BY CARRIER'S NEGLIGENCE. — The corpse of plaintiff's brother was shipped from Kansas consigned to her in Alabama. Through the negligence of defendant carrier, rain was allowed to fall on it at the place of delivery, and plaintiff sought damages for the mental anguish caused by this. *Held*, that she could not recover. *Deavors* v. *Southern Express Co.*, 76 So. (Ala.) 288.

The court goes on the theory that the injury resulted from the breach of a contract for interstate shipment, governed by federal laws, and that damages for mental anguish are not recoverable for such a breach. *Western Union Telegraph Co.* v. *Hawkins*, 73 So. 973; *Western Union Telegraph Co.* v. *Brown*, 234 U. S. 542, 547. But there is no federal rule governing the elements of damages, and no federal common law, so the state law remains in force. *Western Union Telegraph Co.* v. *Call Publishing Co.*, 181 U. S. 92. See 30